Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from AMERITECH CORPORATION, Transferor to SBC COMMUNICATIONS INC., Transferee	))))))))))	CC Docket No. 98-141

AFFIDAVIT OF RUSSELL MORGAN
ON BEHALF OF AT&T CORP.

Russell Morgan, being first duly sworn on oath, deposes and state as follows:

1. I am Regional Vice President Southwestern States for AT&T Corp. ("AT&T"). AT&T's Southwest Region includes Texas, Oklahoma, Missouri, Kansas and Arkansas.

2. I have worked in the Southwest Region since 1996 on a variety of local service entry and long distance competition matters, including AT&T's negotiations with Southwestern Bell Telephone ("SWBT") and GTE Corporation ("GTE") under the Telecommunications Act of 1996.

3. A necessary condition to AT&T's entry into the local market in SWBT's service area is the development of computerized operating systems by both

AT&T and SWBT that allow customer and operating information to flow seamlessly between the two companies.

4. AT&T retained Ernst & Young ("E & Y") as the systems integrator to manage the development of AT&T's operating systems. On March 30, 1998, AT&T submitted a letter to the Texas Public Utility Commission ("PUC"), copied to counsel for SWBT, publicly disclosing for the first time AT&T's retention of E & Y and describing the schedule for the development and implementation of AT&T's operating systems.

5. On March 31, 1998 Mr. Ed Whitacre, Chairman of SBC, telephoned Mr. Philip Laskawy, Chairman of E & Y, regarding AT&T's retention of E & Y. See, Attachment A appended hereto. See also Discussion of Texas PUC Commissioners Dkt. No. 16251, May 21, 1998 Open Meeting Transcript, pp. 325-333, appended hereto as Attachment B.

6. On that same day, March 31, 1998, AT&T received a call from representatives of E & Y stating, E & Y intended to disengage from the AT&T project.

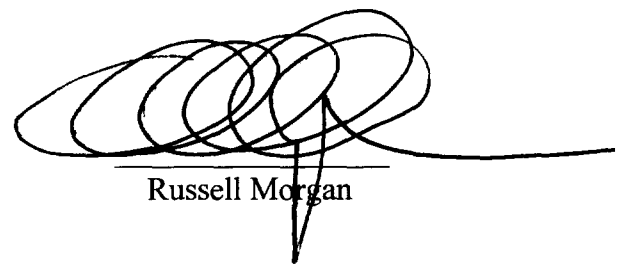
7. Except for the limited work activities necessary for E & Y to disengage from the AT&T project, further operating systems development work was effectively halted.

8. As a consequence of the disengagement of E & Y, AT&T was forced to substantially delay its computerized operating systems development activities. On June 15, 1998, AT&T file a petition initiating a lawsuit against SBC and SWBT in the 192nd District Court, Dallas County, Texas asserting that the activities described above constitute a tortious interference with contract or prospective contract and unfair

competition. See Amended Petition, filed on August 4, 1998, appended hereto as Attachment C. That case is set for jury trial on July 12, 1999.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on October 10, 1998



Russell Morgan

SUBSCRIBED AND SWORN TO BEFORE ME this 10 day of October 1998.

Patricia W. Lowe
Notary Public

My Commission Expires:

7-8-2000

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

April 2, 1998

MEMORANDUM FOR FILE

Re: Ernst & Young

This memo is to document my conversations with various Ernst & Young executives regarding their engagement with AT&T on the Texas Local Factory platform and systems development.

On the evening of Tuesday, March 31, 1998, I was alerted by Mr. Saboo of my staff that we had been contacted by the Ernst & Young account manager, Rudy Valli, regarding their intention to terminate their involvement on the systems and platform development work for the Local Factory.

On Wednesday, April 1, at 12:35 p.m., I had a personal conversation with Mr. Valli of Ernst & Young regarding this situation. He related the following sequence of events:

At approximately 1:30 p.m. on March 31, the account manager from Ernst & Young who handles the SBC account contacted him and faxed to him a copy of AT&T's letter regarding our implementation schedules that had been filed with the Texas Public Utilities Commission on Monday, March 30. Ernst & Young was identified in this letter as being the prime contractor for our development efforts. He indicated that they had acquired this letter via fax from the office of Jim Ellis (SBC's Chief Counsel). He expressed to me that the SBC account executive from Ernst & Young suggested that this may be troublesome between the two client groups. It was shortly thereafter that he and the SBC account executive were engaged in a conversation with Mr. Gary Vanderlinden who is the principal partner for telecom consulting for Ernst & Young. Mr. Vanderlinden relayed to them that shortly prior, the Chairman of Ernst & Young, Mr. Phil Laskawy, had received a call from the Chairman of SBC, Mr. Ed Whitacre regarding the referenced letter. He indicated to them that Mr. Whitaker expressed a conflict of interest, and that Mr. Laskawy had decided no other course but to terminate AT&T's engagement. He told me that very little appeal from him was accepted, and that he was told the decision had been made and to therefore notify AT&T.

On the evening of Wednesday, April 1, I had a personal conversation with Mr. Gary Vanderlinden. Mr. Vanderlinden confirmed that Mr. Laskawy had been contacted directly by Mr. Whitacre and that he had expressed a conflict of interest with regards to their engagement with AT&T. Further inquiry with regards to the specifics of the conflict of interest argument, Mr. Vanderlinden acknowledged that it was not a direct specific conflict with regard to the work they were doing for AT&T vs. that for SBC, but rather a general one. He indicated that Mr. Whitacre expressed concern with "helping AT&T get into the local market". He expressed the feeling of being caught in the middle and felt that Ernst & Young had no other choice to make.

On Thursday, April 2, at 9:40 a.m., I had a personal conversation with Mr. Vanderlinden, Mr. Roger Nelson (Partner for all Ernst & Young consultants), and Mr. Laskawy, Chairman of Ernst & Young. Again, the direct contact with Mr. Whitacre was reaffirmed. Mr. Laskawy indicated that in these cases where a major client expresses a conflict of interest, that it was their policy to take action. Although Mr. Laskawy acknowledged that there wasn't any direct conflict in his mind and that appropriate firewalls had been established, he did express his need to address the concerns of a major client. He expressed the desires to make the transition as easy as possible, but his decision remained the same.

In addition, on April 2, I recontacted Mr. Valli and requested a letter from a partner of Ernst & Young expressly indicating their intention and reason for such.

RIAN WREN

Page 322

Friday.

CHAIRMAN WOOD: Please also make those available on our Internet web page simultaneous with your filing so that they can be pulled down, not through interchange but at no cost to these parties and other interested parties who are keeping an eye on what we're doing.

I could use a break, so why don't we take one.

MR. SIEGEL: Chairman, for the parties, how long?

CHAIRMAN WOOD: Ten minutes.

(Brief recess)

AGENDA ITEM NO. 18

PROJECT NO. 16251
INVESTIGATION INTO SOUTHWESTERN BELL TELEPHONE COMPANY'S ENTRY INTO IN-REGION INTERLATA SERVICE UNDER SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996

CHAIRMAN WOOD: We'll go back on the record. We don't have much more. Project 16251. Further thoughts on the process?

COMM. CURRAN: Yeah. I just

Page 323

wanted to -- we may -- I don't think we've lost too many parties. On the collaborative process that we've spent so much time discussing, I -- I really would impress upon the parties that I think it's our -- our joint view up here that this is a process that really is designed to try to come to some sort of closure and work out some of the problems that we've seen in a -- in a cooperative process so that we can -- we can -- we can get to some finality.

And if the parties would please -- I know it's very difficult, but please refrain from -- from viewing this process as a -- as a place to posture, as a place to litigate, as a place to stake out positions. I mean, if you don't think you can be helpful to the process, then, frankly, stay away. That is better than going in there and -- and -- you know, you all -- everyone will have an opportunity to -- to address and comment, et cetera. But I think what -- you know, what we really are faced here with is ultimately coming to a commission -- coming to a commission decision as to whether we think these things have been

Page 324

met. And while, you know, everyone has been extremely helpful, I think you can be helpful in the process by -- by approaching it that way. And -- and I thank you for doing that.

And also, for the staff, I mean, this is obviously -- this is a huge process still to come, and I think you all should feel comfortable in splitting yourselves up and maybe -- you know, all of you don't have to be in everything. If you need us to say that to you, that we don't expect everyone to be on top of everything. Split yourselves up in a rational, efficient way and move on these -- on these subjects. And it may be that by doing that, you know, you're going to have to look to see which of the parties are most interested in certain issues and so you don't double up because they can't be in two places at once. But on the other hand, if there's parties interested in only one proceeding, go ahead and schedule another one at the same time, even if they can't be there, because they might not have any interest in it. And I think that would be a better -- I mean, I think you should feel comfortable doing that.

Page 325

CHAIRMAN WOOD: I think that's -- I totally associate myself with that.

COMM. WALSH: That makes three.

CHAIRMAN WOOD: What else on --

JUDGE FARROBA: We have another procedural matter in Project 16251. There is an appeal by Southwestern Bell of ruling on the deposition of Mr. Whitacre, and then in response -- AT&T filed a response and, I believe, a conditional appeal of the order on the deposition of Mr. Wren, dependent upon your ruling on that appeal by Southwestern Bell.

COMM. CURRAN: Go ahead?

Well, I voted to hear this appeal, and I think the reason I did -- well, there's a number of reasons I did. One is -- my understanding of the issue really is -- is that the -- the sole question is whether Mr. Whitacre improperly pressured Ernst & Young. And it seems to me that should be the sole focus of -- of any deposition -- or for any deposition and -- and

not a general fishing expedition for everything else.

But having said that, I think there's a long history in litigation and a long history in administrative law that if there is a way to spare CEOs from having to be pulled into -- and away from running their businesses and pulled into these things, if there's a way to get information and to get evidence from some other reliable source, that that should be done. And it seems to me that here there have been depositions of the -- of the individuals on the other side of those telephone conversations, and there's certainly no evidence that I've seen that there's any reason to doubt the veracity of the information obtained, so I don't see the necessity of deposing Mr. Whitacre. And so I would grant the appeal.

CHAIRMAN WOOD: I also added that I guess -- I've kind of been thinking a lot about this issue in the last week and I've kind of gone all over the map. My initial thought was on the fishing expedition issue, that it was a bit -- left a little bit broad

the telephone, because this is an issue that is not a contested issue. This commission has decided it. I don't notice that needing AT&T to do EDI at the elemental level is in any pleading. Although everything else seems to be pled to the court, that's not one I see in the pleadings, that we need to get AT&T hooked up to the EDI.

So the fact that Ernst & Young, who in a wonderful full-page ad, which to me is not a bug caught between the reels, if you can afford to pay the Wall Street Journal for a full-page ad, says that there isn't a business we can't improve, which is their sig line here on the bottom, I wonder if the business they understand. I mean, obviously, they wouldn't have been hired unless they were -- were qualified to do this, but the fact that they can't understand that this is not a contested issue, that this is an issue that needs to be resolved to help Southwestern Bell get what it wants, and that's what disturbs me fundamentally.

A week ago, this was relevant. That's the standard. In discovery, is it

here, and so Monday I voted to add. I've since read the *entire* depositions from Mr. Laskawy -- or Laskawy and Mr. Spiropoulos. And in light of what we just did, I mean, I think one of the -- one of the things that -- and it's in the -- in the full draft of the staff recommendation is we said that the corporate attitude and the corporate behavior wasn't right.

This evidence here, to me, if the company doesn't wish to rebut it more than what they've done on their pleadings, stands as it is, and I think it is -- is pretty damning. But I don't think it's damning quite for the same reason that the parties on either side allege or disavow. I think it's damning because OSS is not a contested issue. Getting AT&T to get its EDI up and operational is something you ought to bend over backwards to make happen. And the fact that it's deemed by -- by your company and your advocacy, to be fair, Mr. Kridner, and on the other side as well, from AT&T, that this is a point of contention bugs me a lot deeper than, you know, what Ed Whitacre did or didn't do over

relevant? It's relevant. We've ruled today, in my mind. We've determined that there are violations of the public interest, one of which is the corporate behavior and attitude of Southwestern Bell, and I think unrebutted the -- the testimony I don't think requires a malicious intent. I'm not going to impute that in there. And I think, however, whether it's found or not, the point that AT&T alleges is largely proven, that there is an interference here that -- that is not indicative of a company that is interested in getting local competition off and operating in this state.

Having basically, I guess, given the -- the company the relief it sought, which is a finding that this -- the public interest has been not upheld by Southwestern Bell by this activity, regardless of intent, I think the actions of the activities speak for itself. I kind of think it's -- it's -- it's now moot.

I think the judge was right, it is relevant, the man should have been deposed. I think in -- in the -- the doctrine that you

Page 330

cite on not deposing the person, I think that assumes that that person wasn't directly involved in something that, you know, probably a mere underling should be involved in, but -- so I think it probably would at any stage be relevant to do that. But for, I think, different reasons, Pat, I would come to the same point, that the point has been proven by the evidence presented, and that anything further is really cumulative to a decision we've already reached that, you know, this kind of behavior is not acceptable for the purposes of 271 and the public interest.

So I would, I guess, conclude based on my final reading of all these depositions from the Ernst & Young people, that you've already made your point.

COMM. WALSH: I think that probably is all true and I would agree with -- with you, Mr. Chairman, that this isn't an issue of whether or not one would allow a chief executive officer to be deposed, but where you have any individual who's been directly involved in issues, then they have knowledge about those issues.

Page 331

The question of whether it's -- it's moot or whether it continues to be pertinent, I think I would agree with you if this commission were the -- were the person who decides these issues. But this record is being built for the FCC to decide these issues. And I think if we were dealing with anyone other than a CEO, the decision would probably clearly be that all parties who are involved in -- directly in these issues would be subject to being deposed.

If the issue is truly moot, then it's moot. But if it's not, then I don't think that we should have a different standard for someone who's involved in -- directly in issues before the commission or before the FCC because of their position in the corporation.

CHAIRMAN WOOD: I would sign an order to that effect. If it later becomes unmoot by some other activities, I think the better -- the better extent is the getting here while it's still -- before the issue has been decided. I -- I think sometimes -- again, I think the record that I read just as recently as last night, Mr. Laskawy's deposition just says a lot. I think if you're interested in making competition work, you don't do things like this. And to his credit, the man was *pretty* blunt about kind of how everything played out. And Mr. Spiropoulos, who was the other deponent in San Francisco, was very detailed about their operations. And, you know, part of me is, like, if you've got a tortious interference with contract claim, AT&T, take it to a district court. That's an interesting finding if you care to make it.

I think it's in my interest to get this thing moving forward with constructive things. I don't think this was a constructive action. I think y'all are correct on that, but I think it's time to -- I mean, I've spent -- the staff has spent a lot of time, I spent a lot of time reading this that I could have spent out getting a suntan in all the smog, but these are hard to read outside, I'll tell you. That's -- I think the ruling has been made on the broader issue that AT&T sought recovery of and that this was not the right thing to do. And I would just say it's

Page 333

time to move on.

But I think that the standard -- and, in fact, we probably ought to record that in writing. The standard is people directly involved in things are deposed, and so we don't have the lingering doubt that time basically was -- was the rescuer here, but it ought to not be that way in the future.

JUDGE FARROBA: Okay, so for now, then, this commission should be -- the commission that was issued should be pulled down, and then for Mr. Wren also?

CHAIRMAN WOOD: All parties, mm-hmm.

JUDGE FARROBA: All parties.

CHAIRMAN WOOD: We've heard what we needed to hear on the issue, and parties have argued it through whatever pleadings they made before this commission, and I guess my thought is evidence is sufficient to make the finding we made on the public interest.

COMM. WALSH: I think it has an impact on -- on the implementation docket as well and -- and I agree with you. I mean,

if we're going to make a finding that this was inappropriate behavior, I think, that -- that interfered with someone else's ability to move forward on implementation, I think that's -- that's a fair thing. And I do believe that knowing what I know about accounting firms, when somebody acts in 60 minutes, that's rare and unusual. So I do think that it probably does speak for itself in terms of --

CHAIRMAN WOOD: Res ipsa loquitur.

COMM. WALSH: -- AT&T having proved their point.

CHAIRMAN WOOD: In that regard, then, I think the answer to your question would be yes on all accounts, both sides.

We have a final item under these conjoined dockets today relating to a number of questions -- well, actually, just a few questions that we asked if anybody had relating to pricing under the AT&T mega-arb agreement.

MR. SIEGEL: That's correct, Mr. Chairman. For the record, Howard Siegel.

We invited questions relating to clarifications or real world application. We received questions from AT&T and Intermedia. We also asked a question concerning the central office access charge. We received a pleading from AT&T on that, and we've also received pleadings from Southwestern Bell responding to each of the three pleadings that I mentioned.

CHAIRMAN WOOD: Okay. And as to the AT&T pricing issue, why don't we take those three questions up first?

MR. SIEGEL: One thing that -- that we would suggest is on some of the direct pricing ones that are more questions directed to the commission, Mr. Parish is going to respond to them. On other questions, what we thought is that we would actually move off to the side, and to the extent that you want the subject matter experts from Southwestern Bell and other parties to come up to the table so that they will be able to do that.

CHAIRMAN WOOD: All right.

MR. PARISH: Nelson Parish, OPD, for the record. AT&T had three questions. And I guess I'm just going to read the question and then just read the clarification of the question.

The first question was: Should the CLEC utilizing EASE be penalized by the limitations of the EASE system which require the CLEC to send individual orders for each line on the customer account? For example, one customer with three lines equals three converging -- conversion charges on -- on that one account.

Basically, in response to that and as a clarification, if Southwestern can -- if Southwestern Bell can process more than one line per order for its own purposes, then the CLEC should be charged on a per-order basis rather than on a per-line basis for the same types of orders.

CHAIRMAN WOOD: And do we know from any of the Bell experts if that, in fact, can happen?

MR. SPARKS: That can happen.

CHAIRMAN WOOD: That a multiple order can happen and multiple lines can be ordered with EASE at the same time?

MR. SPARKS: Yes, in certain circumstances, with stacked -- I'm Nathan Sparks with Southwestern Bell. As we've provided in our pleading, yes, in conditions where residential lines are stacked in an account, one service order can transition or convert those accounts.

CHAIRMAN WOOD: Okay. Well, then, that would be -- in that case, then, I guess the question would be that if it's one order, then it's one ordering charge, as opposed to three lines is three ordering charges.

MR. SPARKS: Right.

MR. SIEGEL: And just to clarify for Mr. Sparks, the -- the question AT&T raised about three lines, three conversion charges, does that occur regardless of whether or not the lines are stacked, or is that only if they're not stacked? I'm just trying to...

MR. SPARKS: There are other instances where we have disassociated lines, system bill lines where there would be

NO. DV98-04627-K

AT&T CORP. and AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	DALLAS COUNTY, TEXAS
SOUTHWESTERN BELL TELEPHONE COMPANY and SBC COMMUNICATIONS, INC.,	§	
Defendants.	§	192nd JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED PETITION

AT&T Corp. and AT&T Communications of the Southwest, Inc. (collectively, "AT&T"), Plaintiffs in the above-styled and numbered cause, file this First Amended Petition complaining of Southwestern Bell Telephone Company and SBC Communications, Inc., and would respectfully show the Court the following:

I. Parties

1. Plaintiff AT&T Corp. ("AT&T Corp.") is a corporation organized and existing under the laws of the State of New York, with its principal place of business located in New Jersey.

2. Plaintiff AT&T Communications of the Southwest, Inc. ("AT&T Com") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Austin, Texas.

3. Defendant Southwestern Bell Telephone Company ("SWBT") is a corporation organized and existing under the laws of the State of Missouri. SWBT has appeared herein and may be served through its attorney of record, Robert E. Davis.

4. Defendant SBC Communications, Inc. ("SBC") is a corporation organized and existing under the laws of the State of Delaware. SBC has appeared herein and may be served through its attorney of record, James E. Coleman, Jr.

II. Jurisdiction and Venue

5. The amount in controversy exceeds the minimum jurisdictional limits of this court.

6. Venue is proper in Dallas County, Texas pursuant to the general venue statute, Tex. Civ. Prac. & Rem. Code § 15.002, because Defendant SWBT is a corporation with its principal office in this State located at One Bell Plaza, Dallas, Dallas County, Texas.

7. Pursuant to Tex. Civ. Prac. & Rem. Code § 15.005, this Court has venue as to both Defendants because the claims against Defendants SWBT and SBC arose out of the same transaction, occurrence, or series of transactions and occurrences.

III. Factual Background

8. AT&T brings this action because SBC and SWBT, acting through SBC's Chairman, Ed Whitacre, and others, have willfully and maliciously interfered with actual and prospective contracts of AT&T, in an effort to maintain SWBT's monopoly over Texas local telephone service markets, and to prevent AT&T from entering those markets. Over the past few years, both the Texas Legislature and the United States Congress have enacted extensive reform legislation designed to open local telephone service markets and end the monopoly on local service enjoyed by incumbent local exchange carriers ("LECs") such as SWBT. Among other reforms, the Federal Telecommunications Act of 1996 (the "FTA") contained provisions designed to remove barriers to entry in the local telephone service market and foster competition in that market. In part, the FTA now requires incumbent LECs to permit new market entrants

(such as AT&T) to purchase services and network functionalities for resale, thus avoiding costly construction of duplicate facilities, and resulting in greater competition and cost savings to consumers.

9. On or about June 5, 1997, the Texas Public Utility Commission (the "PUC") issued an order to grant AT&T a Certificate of Operating Authority ("COA") to operate as a provider of local exchange service in the State of Texas. The PUC's order was the culmination of an extensive review process, in which the PUC examined AT&T's financial, technical, and other qualifications as a potential local service provider. The grant of a COA was the first legal step in AT&T's entry into the local telephone service market. In order to actually offer local service to its customers, it would be necessary to design the technical means of connecting to and communicating with SWBT's already existing telecommunications network.

10. SWBT is the exclusive owner of facilities and the exclusive provider of facilities-based local service throughout the great majority of its Texas service area. The FTA requires SWBT, among other duties, to connect its network with the networks of competitive providers so that the customers of each provider can continue to place and receive telephone calls to and from the customers served by the other provider. Because of SWBT's exclusive ownership of the existing ubiquitous local network in its service area, the FTA also required SWBT to permit competitive providers such as AT&T to purchase access to individual components of SWBT's existing network to utilize in providing service to the competitive providers' own customers. Each of these activities requires that the systems of SWBT and of the competitive provider be able to interface with each other on an efficient, effective, electronic basis for activities such as the ordering, maintenance, and billing of telecommunications services. The systems that perform

these and other functions necessary to serve a customer are referred to as operations support systems ("OSS").

11. AT&T hired the telecommunications consulting group of the nationally-recognized accounting firm Ernst & Young ("E&Y") as the Systems Integrator to assist AT&T in analyzing the development work necessary to interface with SWBT's OSS and network in order to offer local service, to calculate the costs of implementing such work, and to design and implement a systems platform that would enable AT&T to offer local telephone service to customers. Ernst & Young employs approximately 25,000 professionals in three divisions: accounting, tax, and consulting. The consulting division has four global consultant centers: North America, Asia Pacific, Europe, and Latin America. The audit and tax practices are similarly organized.

12. Prior to performing services for AT&T, E&Y followed its standard internal procedures for accepting new engagements. E&Y had previously performed services for AT&T and AT&T Wireless, as well as a number of other competitors of SBC. After its initial review, E&Y personnel prepared a proposal for the AT&T project.

13. Before selecting E&Y as the Systems Integrator, AT&T personnel attended E&Y presentations at which E&Y's qualifications and expertise in integrating telecommunications systems were discussed at length. At the recommendation of AT&T's primary systems vendor, Scopus, AT&T determined that E&Y's telecommunications consulting group had the breadth and depth of systems expertise necessary to quickly and successfully integrate systems software and hardware to connect the AT&T and SWBT systems.

14. After extensive consultations with AT&T, E&Y began the first step in a multi-phase project, scheduled to be completed by approximately January 1, 1999, in which E&Y

would design and implement a system which would enable AT&T to provide local service. At E&Y's request, AT&T executed an initial Letter of Understanding ("LOU") in February 1998, which outlined initial terms of the first phase of the agreement. The LOU stressed the complexity of the project and the necessity for speed of completion. It stated, for example, that "These are aggressive objectives that require extensive planning, focus, scope control and significant resources. Moreover, these objectives emphasize speed of execution and dictate a rapid start-up." The initial phase of the project would provide the detailed requirements necessary to complete the implementation plan, and would include, among other things, identification of work flows, process descriptions, functional specifications, including product enhancements and customizations, and would establish a program management approach for the entire project. E&Y assembled a team of more than twenty highly qualified, experienced technological personnel from E&Y locations throughout the country, to design and implement the AT&T system for connecting with SWBT's network, in order to enable AT&T to enter the local telephone service market as a competitor of SWBT.

15. E&Y anticipated that it would undertake successive portions of the project through project completion in 1999, and AT&T itself had no intention of selecting a new vendor to replace E&Y in those subsequent stages. E&Y and AT&T anticipated handling the drafting of formal written contracts to memorialize their agreements for the successive stages on a stage-by-stage basis.

16. In early March of 1998, an amended LOU for the first phase of the project was prepared by E&Y and executed by AT&T and E&Y. The amended LOU redefined the project phases, identified in detail the staffing for the initial portion of the first project phase, and set a fee of $2.1 million, inclusive of ordinary out-of-pocket expenses, for the initial portion of the

first project phase. Pursuant to the terms of the amended LOU, the project would be divided into two phases, each consisting of two major activities: (1) analysis and requirements definition, and (2) design and implementation. In February and March of 1998, E&Y and AT&T worked together extensively on the initial portion of the first project phase.

17. On March 30, 1998, AT&T filed a letter with the PUC, discussing the implementation schedule for certain technical aspects of AT&T's entry into the local telephone service market. The letter ("**Exhibit A**"), to Howard Siegel, Chief Attorney in the Office of Policy Development, identified E&Y as the external systems developer assisting AT&T with the systems development necessary to connect to SWBT's network. A copy of that letter was served on SWBT.

18. The very next day, March 31, 1998, SBC's Chairman and CEO, Ed Whitacre, acting on behalf of SBC and SWBT, made a rare and unusual telephone call to Phil Laskawy, the Chairman and CEO of E&Y. Mr. Whitacre advised Mr. Laskawy that he (Mr. Whitacre) had just been reading a Texas Public Utility Commission document that indicated E&Y was doing some work for AT&T. The document Mr. Whitacre referred to was obviously none other than AT&T's letter to Mr. Siegel, discussing AT&T's plans to offer local telephone service in Texas, and E&Y's assistance with that project. Mr. Whitacre inquired of Mr. Laskawy about the nature of the work E&Y was doing for AT&T. Within an hour, Mr. Laskawy decided to terminate E&Y's services to AT&T, and informed Mr. Whitacre of his decision. Mr. Laskawy was advised by the head of E&Y's telecommunications consulting group that it would be extremely difficult for AT&T to replace E&Y with another systems integrator. However, Mr. Laskawy remained firm in his decision that E&Y should discontinue providing service to AT&T. Instead of notifying AT&T of his decision, Mr. Laskawy called Mr. Whitacre to inform him of the

decision to terminate the E&Y work for AT&T. Mr. Whitacre ended the brief conversation by thanking Mr. Laskawy. Later, Mr. Laskawy described his feeling at that time that E&Y was "like a little bug between two gorillas"; clearly a feeling that was not conveyed by anything AT&T said or did, because Mr. Laskawy had not spoken with AT&T or anyone directly involved with the E&Y consulting project for AT&T.

19. AT&T was advised later on March 31 that E&Y was withdrawing from its work to assist AT&T with the local telephone service project. E&Y representatives stated to AT&T that they would assist in the prompt transition of the project to another consulting group, but E&Y would *not* complete the multimillion dollar project to facilitate AT&T's entry into SWBT's local telephone service market. AT&T was also told that E&Y's decision to withdraw was immediate and irrevocable, and that the decision was made by E&Y's Chairman, Mr. Laskawy, as a result of the telephone conversation with Mr. Whitacre. AT&T was told that SBC, through Mr. Whitacre, had expressed its concern to E&Y that E&Y was helping AT&T get into the local market.

20. On or about April 14, 1998, approximately two weeks after the telephone call from Mr. Whitacre to Mr. Laskawy, and after negative publicity about that call and E&Y's resulting withdrawal from the AT&T project, SBC sent a letter to Louis Brill, the partner in charge of E&Y's San Antonio office. Although Mr. Brill was not directly involved in the AT&T project, he was advised in the letter that SBC had "no objection" to E&Y's continuing with the AT&T project. The substance of this letter was never conveyed to the E&Y project manager for the AT&T project, and clearly was only window dressing by SBC/SWBT in the fall of bad publicity.

21. Nevertheless, the next day, on April 15, 1998, in a previously scheduled, unrelated meeting with Mr. Whitacre, Mr. Laskawy mentioned the AT&T issue and apologized to Mr. Whitacre for E&Y's having accepted the AT&T project. Mr. Whitacre accepted the apology by replying, "These things happen."

IV. Count One: Tortious Interference with Contract

22. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1 through 21 as if fully set forth herein.

23. SWBT and SBC had knowledge of the agreements, including the LOU, discussed above, between AT&T and E&Y. Willfully and intentionally, and to achieve the improper purpose of harming AT&T, Defendants induced E&Y to breach and violate the provisions of E&Y's agreements with AT&T, including but not limited to inducing E&Y to fail to complete fully the agreements and terms of the amended LOU, in order to prevent and/or delay AT&T's entry into the local telephone service market. In addition, Defendants' actions made performance of E&Y's agreements with AT&T more burdensome, more difficult, impossible, or of lesser value to AT&T. As a proximate result of Defendants' wrongful conduct, Plaintiffs were forced to locate another systems integrator to assist in AT&T's entry into the local telephone service market, further delaying AT&T's entry into such market. As a proximate result of E&Y's withdrawal from the AT&T project, continuing progress on the project was made more burdensome and difficult and of less value, and progress was impaired while AT&T solicited requests from potential replacement systems integrators, considered the various potential replacements, selected a replacement systems integrator, undertook the necessary education of the replacement vendor as to AT&T's goals and requirements and the specific details of the prematurely interrupted project, and oversaw completion of various discrete activities which

remained unfinished at the time of E&Y's departure. The delays relating to replacement of E&Y have necessarily led, and will continue to lead, to a number of other categories of damages that have yet to be fully catalogued or quantified, including loss of a competitive advantage stemming from the now-likely delay of AT&T's entry into the Texas local telecommunications market. Accordingly, Plaintiffs have suffered direct and consequential damages, both from the additional costs to locate and educate a second technical consultant, and those damages resulting from the further delay of entry into the local telephone service market.

V. Count Two: Tortious Interference with Prospective Contract

24. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1 through 23 as if fully set forth herein.

25. Further, Defendants had knowledge of prospective contracts and the business relations between AT&T and E&Y. Willfully and intentionally, and solely to achieve the improper purpose of harming AT&T, Defendants induced E&Y not to enter into such contracts in order to prevent and/or delay AT&T's entry into the local telephone service market. Plaintiffs would show that there was a reasonable probability that, absent the Defendants' interference, AT&T would have entered into subsequent written agreements with E&Y for subsequent phases of the project. AT&T and E&Y had already commenced a verbal and written dialog concerning the details of subsequent phase written contracts at the time of Defendants' tortious conduct. Defendants' acts in persuading E&Y not to enter into further contracts with AT&T and in interfering with business relations between E&Y and AT&T were malicious, as Defendants' motive was solely to deprive Plaintiffs of the benefits of the prospective contracts and business relations and to undermine their future business opportunities. As a proximate result of Defendants' wrongful conduct, Plaintiffs were forced to locate another systems integrator to

assist in AT&T's entry into the local telephone service market, further delaying AT&T's entry into such market. As a proximate result of Defendants' conduct, E&Y failed to enter into subsequent written contracts relating to the AT&T project, continuing progress on the project was made more burdensome and difficult and of less value, and progress was impaired while AT&T solicited requests from potential replacement systems integrators, considered the various potential replacements, selected a replacement systems integrator, undertook the necessary education of the replacement vendor as to AT&T's goals and requirements and the specific details of the prematurely interrupted project, and oversaw completion of various discrete activities which remained unfinished at the time of E&Y's departure. The delays relating to replacement of E&Y have necessarily led, and will continue to lead, to a number of other categories of damages that have yet to be fully catalogued or quantified, including loss of a competitive advantage stemming from the now-likely delay of AT&T's entry into the Texas local telecommunications market. Accordingly, Plaintiffs have suffered direct and consequential damages, both from the additional costs to locate and educate a second technical consultant, and those damages resulting from the further delay of entry into the local telephone service market.

VI. Count Three: Unfair Competition

26. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 25 as fully set forth therein.

27. Defendants' actions are further actionable, inasmuch as they constitute common law unfair competition. As set forth above, Defendants' actions have proximately caused several categories of injury to Plaintiffs. Defendants' actions did not amount to fair competition, but were instead unfair, and contravened accepted principles of business ethics and integrity and honest business practice as they amounted to a concerted wrongful scheme to prevent AT&T's

services from being used in competition with the Defendants' services. The actions of SBC and SWBT violated definite legal rights of AT&T, for, as set forth above, they amount to tortious interference with contract and tortious interference with prospective contract.

28. Defendants' acts as described above are unfair practices that substantially interfered with and were intended to interfere with Plaintiffs' ability to compete with Defendants on the merits of their respective products and services, specifically by delaying or preventing Plaintiffs' entry into the local telecommunications services market in competition with Defendants' services. In addition, Defendants' acts as described above substantially conflict with definite legal rights of Plaintiffs and with accepted principles of public policy recognized by the FTA, accepted principles of business ethics, professional integrity, honest business practice, and common law doctrines, including tortious interference with contract and prospective contract.

29. As a proximate result of Defendants' wrongful conduct in furtherance of their improper purpose to unfairly stifle competition, Plaintiffs suffered direct and consequential damages as discussed above, including the additional costs to locate and educate a second technical consultant, and substantial damages resulting from the further delay of entry into the local telecommunications service market.

VII. Exemplary Damages

30. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1 through 29 as if fully set forth herein.

31. Plaintiffs would further show that the actions of Defendants were motivated by actual malice, were intentional and willful, and were calculated to make the performance of the LOU, agreements and prospective business relations more burdensome or difficult and of less

value to AT&T, and to block or delay AT&T's entry into the local service market to the detriment of AT&T. Accordingly, Plaintiffs seek exemplary damages to the maximum extent permitted by law, in addition to actual damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs AT&T Corp. and AT&T Communications of the Southwest, Inc. pray that Defendants Southwestern Bell Telephone Company and SBC Communications, Inc. be cited to appear and answer herein and that upon final trial Plaintiffs have judgment against Defendants for:

1. Actual and exemplary damages to be determined by the trier of fact;

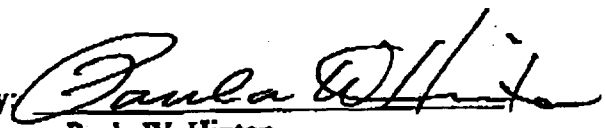
2. Costs and attorneys' fees in an amount to be determined by the Court;

3. Prejudgment and post-judgment interest; and

4. Such other and further relief, at law or in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

By: 

Paula W. Hinton
Texas Bar No. 09710300
1900 Pennzoil Place - South Tower
711 Louisiana Street
Houston, TX 77002
(713) 220-5800
(713) 236-0822 (Fax)

Mary O'Connor, P.C.
Texas Bar No. 15186900
1700 Pacific Avenue
Dallas, Texas 75201-4618
(214) 929-8200
(214) 969-4343 (Fax)

ATTORNEYS FOR PLAINTIFFS
AT&T CORP. AND
AT&T COMMUNICATIONS OF
THE SOUTHWEST, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of August, 1998, a true and correct copy of Plaintiffs' First Amended Petition was sent by hand delivery, to:

James E. Coleman, Jr.
Jeffrey S. Levinger
Carrington, Coleman, Sloman & Blumenthal, L.L.P.
200 Crescent Court, Suite 1500
Dallas, Texas 75201

Robert E. Davis
Hughes & Luce, L.L.P.
1717 Main Street, Suite 2800
Dallas, Texas 75201

Mary O'Connor

AT&T
3/30/98

TABLE OF CONTENTS

DOCKET NO. 19000

RELATING TO THE IMPLEMENTATION OF SWBT'S INTERCONNECTION AGREEMENTS WITH AT&T AND MCI	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.'S EDI IMPLEMENTATION SCHEDULE

List of Files:
g:\arb97\19000\edisched.doc
g:\arb97\19000\edipian.xls
g:\arb97\19000\ediatt2.doc

Original + 22

cc: Pat Wood, Chairman
Judy Walsh, Commissioner
Patricia Curran, Commissioner

Mark Witcher
General Attorney

Suite 1500
919 Congress Avenue
Austin, Texas 78701-2444
512 370-2073
FAX: 512 370-2096

March 30, 1998

Mr. Howard Siegel
Chief Attorney
Office of Policy Development
1701 N. Congress Avenue
Austin, Texas 78711-3326

Re: Docket No. 19000

Dear Howard:

As promised on the March 23 implementation schedule conference call, this document is provided as AT&T's assessment of the ability to meet the EDI schedule adopted in the Commission's March 17 order.

As an initial matter, AT&T is actively working to develop the process by which it will provide the level of specificity required by the Commission for UNE ordering and provisioning. AT&T did not originally propose or anticipate providing the UNE specificity information required by SWBT with an interim EASE ordering/provisioning platform (nor does AT&T believe the information SWBT is requiring is necessary when the loop and port are ordered in combination to provide POTS service). In complying with the Commission's order to provide such, AT&T's view is that customer orders for UNE should be processed once and only once and that future conversions will not be required to re-establish the customers as UNE customers once EDI capability is implemented. As a result, AT&T would not expect to pay two non-recurring charges for processing one UNE customer's transition to AT&T. However, we have been advised by SWBT that double assessment is exactly what it intends.

AT&T is confident that the schedule adopted by the Commission for the completion of UNE ordering capability using the EASE system can and should be met if both parties work cooperatively through the testing process and diligently work to resolve any problems identified during testing. AT&T does not intend to appeal the Commission's requirement of ordering with specificity and is working toward UNE entry in compliance with the specificity requirement.

With respect to EDI, AT&T has requested that Ernst and Young, the external systems developers charged by AT&T with the systems development necessary to achieve the EDI capability discussed in the work sessions, review the ordered schedule and indicate the extent to which the ordered dates are feasible given the work required. AT&T also requested that, if any of the ordered dates are not feasible given the required work activities, Ernst and Young identify the time frames reasonably needed to accomplish the tasks outlined in the schedule in a manner which is aggressive, but which does not present AT&T or the Commission with unrealistic expectations.

AT&T will continue to work diligently, in good faith and to the best of its ability toward complying with the Commission's desires and directives. However, AT&T does not believe it is in the interest of the public, the Commission or AT&T that AT&T offer a commitment to meet a schedule which its own systems developers have determined it will not be able to meet.

The schedule provided by Ernst and Young is reflected in two attached documents. The first is a project schedule identifying the specific activities to be undertaken on a granular basis. The second document compares the dates in the affected parts of item 10 of the implementation schedule with the relevant dates in the Ernst and Young schedule and provides an explanation of the basis for the dates developed by Ernst and Young. The attached schedule demonstrates that AT&T is willing to work toward an accelerated schedule that will result in commercial operation of EDI in February 1999, with testing beginning in December 1998. Although this represents a two-month market entry improvement over AT&T's initial schedule, there is a significant amount of risk associated with accelerating this schedule. Meeting these timelines is fully dependent on a clear set of requirements being finalized between AT&T and SWBT. As we discussed last Monday, the change control process is still under negotiation, AT&T continues to receive ad hoc modifications to the EDI requirements and a new set of requirements were received by AT&T on March 23 representing the latest adoption of OBF guidelines. A more detailed explanation of the underlying requirements and specific activities/milestones is reflected in the attached documents.

AT&T clearly recognizes that the Commission has not previously accepted AT&T's position that EDI capability realistically cannot be completed until the early 1999 time frame. At the same time, AT&T notes that the proposal of SWBT to delay completion of the systems necessary for mechanized billing and the availability of terminating access records and originating 800 access records until March/April 1999 has been retained without any acceleration in the implementation schedule. As a result, the full extent of UNE capabilities will not, in fact, be available until March 1999 because of the development timeframes SWBT requested. In the high volume, residential/small business consumer environment in question, the availability of mechanized billing systems is every bit as imperative to AT&T's entry opportunity as EDI development. It is important that the disparity in the time frames for these systems development activities be synched up.

AT&T requests that this matter be scheduled for consideration on the April 9 call.

Sincerely,

Mark Witcher /gp

Mark Witcher
General Attorney

cc: Pat Wood, Chairman
Judy Walsh, Commissioner
Patricia Curran, Commissioner

Task Id	Task Name	Duration (Days)	Start Date	Finish Date	Predecessor Tasks
1	AT&T EDI Local Plan			2/22/99	
2	Complete Proof of Concept - Milestone		4/20/98	4/20/98	
3	EDI Infrastructure Planning & Deployment	40	4/20/98	6/15/98	2
4	Finalize EDI System Software Functional Requirements	4	4/20/98	4/23/98	
5	EDI Implementation Approach Decision	0	4/23/98	4/23/98	4
6	Evaluate EDI Infrastructure Shortlist	3	5/11/98	5/13/98	5
7	EDI System Software Selection	2	5/14/98	5/15/98	6
8	Finalize Licensing for Software	2	5/18/98	5/19/98	7
9	Configure/Install EDI Environment Platform	18	5/20/98	6/15/98	8
10	Requirements	35	4/20/98	6/8/98	2
11	EDI Business Rule & Mapping Gap Resolution with SWBT	35	4/20/98	6/8/98	
12	Order Management EDI Functional & Data Requirements	35	4/20/98	6/8/98	
13	Sales Execution EDI Functional & Data Requirements	15	4/20/98	5/8/98	
14	Customer Care EDI Functional & Data Requirements	15	4/20/98	5/8/98	
18	Design	20	6/9/98	7/7/98	10
16	Order Management EDI Design	20	6/9/98	7/7/98	12
17	Sales Execution EDI Design	10	6/9/98	6/22/98	13
18	Customer Care EDI Design	10	6/9/98	6/22/98	14
19	Comprehensive Test Strategy Design	20	6/9/98	7/7/98	11,12,13,14
20	Development	45	7/8/98	9/9/98	15
21	EDI Interface Development (extract/load to OMS)	40	7/8/98	9/1/98	18
22	Order Management Development (EDI exception handling, reporting, etc)	40	7/8/98	9/1/98	
23	Sales Execution	20	7/8/98	8/4/98	
24	Customer Care	20	7/8/98	8/4/98	
25	Develop Test Scenarios and Cases	20	7/8/98	8/4/98	19
26	Translator flat file mapping and communicants scheduling configuration	25	7/8/98	8/11/98	18
27	Configure communications gateway	9	8/12/98	8/24/98	26
28	EDI Operational Procedures (including trading partner EDI SLA)	20	8/12/98	9/9/98	26
29	Staging Preparation	50	9/10/98	11/18/98	
30	Internal System Test Preperation	10	9/10/98	9/23/98	20
31	Internal System Testing	15	9/24/98	10/14/98	30
32	Internal UAT Test Preperation	10	10/15/98	10/28/98	31
33	Internal User Acceptance Testing	15	10/29/98	11/18/98	32,27
34	Develop SRT Test Messages	20	9/10/98	10/7/98	20
35	SRT Deployment	57	11/19/98	2/22/99	33,34
36	SRT Preperation	5	11/19/98	11/25/98	
37	EDI SRT	40	11/30/98	2/4/99	35
38	Implementation start date (Go live)	1	2/5/99	2/5/99	37
39	Live Commercial	1	2/22/99	2/22/99	38

AT&T EDI Implementation Issues

#	Activity	Commission : AT&T (completion dates)	Explanation of Date Change
1	AT&T determination of requirements	a) 4/1 : 6/8 b) 4/15 : 6/8	a) AT&T and SWBT have completed the gap analysis associated with the LSOR 2 UNE requirements. AT&T is currently simulating orders and sending them to SWBT to ensure that AT&T has accurately understood SWBT's LSOR2 and EDI release 6, transaction set 3040 requirements for development purposes. AT&T intends to complete this process by the Commission allotted timeframe of 4/15. AT&T and SWBT have not reached an agreement on a change control process for requirements beyond SWBT's LSOR 2 but are working cooperatively to do so. While this activity remains outstanding with a meeting scheduled for April 6 to further work the issues, SWBT provided to AT&T on March 23 a list of issues they intend to implement in EDI Release 8, Transaction Set 3072. AT&T will work diligently to provide its comments to SWBT regarding concerns with the requirements within 2 weeks from receipt and expects that SWBT will provide its final requirements 2 weeks thereafter based on input it receives from the CLEC community at large. With these additional requirements and timeframes, AT&T is estimating 6/8 as the completion date for EDI requirements from a development perspective. b) Requirements definition effort to clarify AT&T/SWBT Business rule and EDI transaction mapping matrix ends 6/8. *(refer to task 10 in the workplan)*
2	EDI - Determine systems development time required	5/1 : 7/7	The design effort is based on the completion of the LSOR EDI data mapping clarification on 6/8. The design phase begins 6/9 and ends on 7/7. *(refer to task 15 in the workplan)*

#	Activity	Commission : AT&T (completion dates)	Explanation of Date Change
3	EDI - AT&T to code and develop to system requirements	a) 7/1 : 9/9 b) 9/1 : 11/18	a) The coding and development effort begins on 7/8 and ends 9/9. AT&T is complying with the Commission's request for a 60 day development timeframe as opposed to its originally requested 120 day timeframe. b) The testing (staging preparation) begins on 9/10 and ends 11/18. *(refer to task 20 and 29 in the workplan)*
4	AT&T/SWBT comprehensive testing	d) 4/6/98 : 7/7/98 e) 4/13/98 : 8/24/98 f) 7/12/98 : 2/4/99 g) 10/1/98 : 2/5/99 h) 10/15/98 : 2/22/99	d) UNE Trial Proc. Planning beginning 6/9 ending 7/7 (refer to task 19 in the workplan). e) Connectivity confirmed 8/24 (refer to task 27 in the workplan) f) Testing period for 40 days beginning 11/30/98 ending 2/4/99 (refer to task 37 in the workplan) g) Implementation start date 2/5/99 (refer to task 38 in the workplan) h) Live commercial date 2/22/99 (refer to task 39 in the workplan)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from AMERITECH CORPORATION, Transferor to SBC COMMUNICATIONS INC., Transferee	)	CC Docket No. 98-141

AFFIDAVIT OF JAMES R. WASHINGTON
ON BEHALF OF AT&T CORP.

I. QUALIFICATIONS.

1. My name is James R. Washington. My business address is Teleport Communications Group Inc., 429 Ridge Road, Office 211, Dayton, NJ 08810. I am Vice-President, Carrier Relations & Settlements, for Teleport Communications Group Inc. ("TCG"). I have a B.S. from the University of Louisville, and an M.S. in Operations Research from the Georgia Institute of Technology.

2. My responsibilities are to manage TCG's overall relationship with other carriers, including the development of interconnection policy, negotiation and arbitration of interconnection arrangements, monitoring compliance with interconnection agreements, management of intercompany settlements, and support of Operations, interconnection facility management, the Network Management Center, and Customer Service in the provisioning and restoration results for incumbent local exchange carrier ("ILEC") services.

3. I held these responsibilities both before and after TCG was acquired by AT&T.[1] My prior position with TCG was as Regional Vice President for TCG, responsible for the Western Region. In that position I had operational responsibility for TCG's operating affiliates in the geographic areas associated with US WEST and Pacific Telesis. Prior to that, I served as Vice President and General Manager of TCG Los Angeles from January 1993 until my promotion in late 1993. My other experience in the telecommunications field includes positions with MobileComm and PacTel Paging, and as Executive Vice President for American Mobile Systems, a Florida-based specialized mobile radio firm.

II. OVERVIEW OF TESTIMONY.

4. In this affidavit, I describe the anticompetitive practices that TCG has faced in obtaining collocated space from Southwestern Bell ("SWBT") since 1993. I focus in some respects on TCG's experience with SWBT in Texas, although the policies that SWBT has adopted and practices that it follows apply generally to the entire SWBT region.

5. As the Commission knows, access to collocated space is a critical requirement for competitive local exchange carriers ("CLECs") seeking to offer certain facilities-based services in competition with SWBT. The Telecommunications Act of 1996 ("Act") recognizes that CLECs can choose to use collocation to introduce facilities-based local competition, and imposes the duty on all ILECs to provide access to collocated space on

[1] Although I am delivering this testimony on behalf of AT&T, for the sake of clarity I refer to TCG in this affidavit because the experiences that I describe reflect the experiences of TCG.

"rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(6). Moreover, the Commission has emphasized that CLECs must be able to obtain collocation "in a timely manner" and that "unreasonable delays in provisioning collocation space create a formidable entry barrier."[2] The Commission has also found that rates for collocation, in addition to being "just, reasonable, and nondiscriminatory," must be provided on "concrete terms" and must not "require . . . further negotiation" that would cause delays in CLECs' entry. *Id.* ¶ 204.

6. For several years, however, SWBT not only has refused to comply with these duties, it has outright defied them. First, SWBT simply has been unable or unwilling to provide collocation in a timely manner. In fact, TCG's first physical collocation in SWBT's territory was not completed until earlier this year, even though TCG first requested physical collocation there in 1993. Even today, SWBT is not meeting provisioning intervals. As the Commission has recognized, unreasonable delays like these have created a significant entry barrier.

7. Moreover, the rates that SWBT initially attempted to impose for collocated space were patently excessive, above-cost, and inconsistent with the Act. The Public Utilities Commission of Texas ("Texas PUC" or "PUCT") required SWBT in *three* separate orders to revise its collocation tariff, finally delegating to its staff the authority to file a tariff on behalf of SBC. SWBT also for years refused to provide concrete terms for collocation, and instead insisted upon individual case basis ("ICB") pricing, which created uncertainty for TCG and other CLECs.

8. While it is unreasonable to expect a carrier to achieve perfect performance, the problems in obtaining collocated space that TCG has encountered with SWBT have been so severe and so sustained that it is impossible to attribute them to mere mistakes. Moreover, these delays have been accompanied by SWBT's repeated defiance of administrative orders, actions that are necessarily willful. It is therefore my belief that the problems that TCG, AT&T and other CLECs have faced in obtaining collocated space reflect the anticompetitive practices of an entrenched monopolist making every effort to maintain its firm grip upon its customers.

III. SINCE 1993, TCG HAS MADE REPEATED APPLICATIONS FOR COLLOCATED SPACE, BUT SWBT REFUSED TO PROCESS THOSE APPLICATIONS IN A TIMELY FASHION AT JUST AND REASONABLE RATES

9. TCG made 18 requests for physical or virtual collocation from SWBT over the four year period from 1993 to 1997. Seven of those requests were for collocations in Houston, six were in Dallas, three were in Fort Worth, and two were in St. Louis. All of the 18 applications were subject to significant delay, required unreasonably long and protracted negotiations, and were priced at excessive and discriminatory rates. Five years after TCG's initial requests for physical collocation, SWBT finally completed two physical collocation cages in Dallas in the second quarter of 1998. In the third quarter of 1998, two sites in Houston and two sites in St. Louis were also completed. Although a handful of cages are now operational, this process was plainly time-consuming, and required TCG

---

[2] *See In the Matter of Application of BellSouth Corp. et al. Pursuant to Section 271 of Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, ¶ 202 (Dec. 24, 1997).

several times to scale back significantly its entry plans. Even now, TCG's entry plans are not proceeding as rapidly as hoped, because SWBT continues to engage in anticompetitive practices with respect to the additional applications TCG has submitted.

10. TCG first began to request collocated space from SWBT back in 1993 pursuant to the Commission's Expanded Interconnection proceedings. Although SWBT was obligated to build the collocated space, and began construction in 1993 and 1994, its rates for those cages were greatly inflated. Moreover, SWBT did not finish the construction of those cages at that time. Instead, once the court of appeals reversed the Commission's Expanded Interconnection Order that required SWBT to provide physical collocation, SWBT quickly and aggressively terminated TCG's physical collocation arrangements and forced TCG to accept virtually collocated space – while still charging exorbitant rates for those inferior arrangements. Moreover, TCG was forced to abandon totally all but two of its collocations because of stringent timelines imposed by SWBT and disagreements with SWBT over terms. As a result, TCG lost the substantial investment made in the physical collocations.

11. The two remaining applications that SWBT unilaterally converted to virtual collocations were finally completed. However, even with this delay, TCG paid non-recurring costs totaling $160,000 for one space, and over $525,000 for the other location. These rates are patently anti-competitive, and bear no relation to SWBT's costs. Yet, because of SWBT's monopoly, TCG had no choice – other than to forego market entry – but to pay them.[3]

[3] Rates for other collocations that TCG submitted around this time were equally exorbitant and not cost-based. For example, TCG applied for virtual collocation in two office in St.

12. After the Act was passed, which placed an unmistakable duty upon SWBT to provide physical collocation at just and reasonable rates, TCG began to negotiate an interconnection agreement with SWBT. The interconnection agreement with SWBT contained an interim agreement for physical collocation.[4] The PUCT's 1996 Arbitration Award[5] on this Interconnection Agreement found that the collocation rates proposed by SWBT were "extremely high" and rejected those rates. Instead, the PUCT adopted TCG's proposal to set interim rates based on the average of collocation prices included in agreements TCG had reached with Pacific Telesis, BellSouth, and NYNEX. The PUCT also ordered SWBT to file revised cost studies by January 15, 1997 and tariffs for collocation by February 15, 1997. November 1996 Award at 46 (Att. A).

13. SWBT, however, did not honor the rates, terms, and conditions for physical collocation ordered by the PUC in its award, and continued to assess unreasonable, non-cost-based rates for physical collocation. For example, in 1997, TCG re-applied for two physical collocations in SWBT central offices in Dallas. At that time, SWBT initially quoted rates of $547,000 and $243,000 for those offices, rates that were simply astronomical and that were many times higher than the average rates of other RBOCs.

Louis, and SWBT assessed TCG prices of over $340,000 for one office and about $240,000 for the other. Moreover, SWBT later sought to raise the price for the latter location to over $375,000.

[4] November 19, 1996, Interconnection Agreement Between Teleport Communications Houston and TCG Dallas (TCG) and Southwestern Bell Telephone Company (SWBT), approved by the Public Utility Commission of Texas on December 19, 1996, in Docket No. 16196, *Petition of Teleport Communications Group Inc. for Arbitration to Establish an Interconnection Agreement* (hereinafter "Docket No. 16196").

[5] Arbitration Award, Docket Nos. 16196, et al., ¶ 93, (Nov. 7, 1996) ("November 1996 Award") (excerpt included as Att. A).

14. SWBT continued its refusal to comply with the Arbitration Award for months, resulting in substantial delay to TCG. On February 18, 1997, as required by the PUCT's November 1996 Arbitration Award, SWBT submitted a physical collocation tariff and cost study, but the rates again plainly failed to comply with the Award.[6] For example, that tariff proposed ICB pricing for 25 of the 29 TCG collocation sites, in direct violation of the November 1996 Award.[7] Because of the ICB pricing and other unlawful provisions, the PUCT staff, on March 13, 1997, suspended indefinitely SWBT's February physical collocation tariff, pending issuance of a superseding PUCT Order. In the meantime, TCG still could not obtain physical collocation.

15. After several months of fruitless negotiations between TCG and SWBT concerning physical collocation, on July 1, 1997, the PUCT ordered SWBT to file by June 27, 1997, yet another physical collocation tariff, supporting cost studies, and workpapers.[8] Once again, however, SWBT's June 1997 collocation tariff was clearly inconsistent with the December 1996 Award. At the PUCT's open meeting later that year, the PUCT chairman expressed his frustration over the inconsistencies between the Commission's Award and SWBT's proposed tariff:

> I think if there's anything more central to facilitating facilities-based competition than physical collocation, then I don't know what it is. And so my thought on [SWBT's] tariff is, I thought we had resolved these issues a year ago. I looked back over our arbitration award a year ago and I

---

[6] In addition, SWBT delayed providing the support for the cost study, until ordered to do so by the Administrative Law Judge in March 1997.

[7] See November 1996 Award, ¶ 13 ("SWBT must tariff the rates, terms, and conditions for physical collocation, rather than requiring negotiation of each collocation arrangement on an individual case basis") (Att. A).

[8] Docket No. 16196, Order No. 19 (July 1, 1997).

> thought it was very specific about things, and I am very frustrated that it has been interpreted in a manner that is not consistent with what we clearly voted last time around.[9]

As a result, the Commission ordered SWBT to file another tariff.[10]

16. On November 3, 1997, SWBT filed its *third* physical collocation tariff of the year. Once again, that tariff failed to comply with the Act or with the PUCT's Arbitration Award. TCG's review of that tariff revealed ten provisions that did not comply with the September 1997 Award, and requested that those provisions be corrected through the PUCT's tariff compliance process.[11] Instead, SWBT addressed the compliance matters in its prefiled testimony and forced the PUCT to consider the terms and conditions for physical collocation for the third time in the arbitration hearing.

17. On December 19, 1997 the PUCT issued its third Arbitration Award addressing physical collocation. In that Award, SWBT was ordered to make eight revisions to the physical collocation tariff as already ordered by the September 1997 Award and to file by January 30, 1998, a "revised physical collocation tariff which fully complies with the terms" of the December 1997 Arbitration Award. [12]

---

[9] *See* Open Meeting of the Public Utilities Commission of Texas, Transcript at 8 (Sept. 24, 1997) (statement of Chairman Wood) (excerpt included as Att. B).

[10] Docket No. 16196, Arbitration Award at 5, (September 30, 1997) ("September 1997 Award").

[11] *See TCG's Motion for Conformance to the Arbitration Award of SWBT's Physical Collocation "Compliance" Tariff, for Findings of Filing of Severely Non-Compliant Tariff, and for Sanctions,* Docket No. 16196, (Nov. 18, 1997).

[12] *See* Arbitration Award, Docket No. 16196, Appendix D, Issues 35, 38-42, 44, and 45, (December 19, 1997).

18. SWBT filed another proposed physical collocation tariff on January 30, 1998. After CLECs and other interested parties filed comments on that tariff, on February 25, 1998, the PUCT considered SWBT's *fourth* physical collocation tariff. Because SWBT yet again failed to conform to the Commission's directives, now contained in *three* Arbitration Awards, the PUCT took the unprecedented step of delegating to its staff the authority to file the tariff on behalf of SWBT. Because of SWBT's recalcitrance in following the PUCT's clear orders, this step was necessary to ensure the tariff complied with the Awards and Staff's rulings on the remaining disputes.[13] Only after the staff filed the tariff did the Texas PUC approve the tariff on March 9, 1998.

19. SWBT's anticompetitive conduct in the course of these proceedings significantly impacted TCG's entry plans. Indeed, as noted above, TCG's first physical collocations in Texas were not installed until the second quarter of 1998, after the PUCT staff filed the tariff on behalf of SWBT.

IV. SWBT's ANTICOMPETITIVE CONDUCT HAS CONTINUED TO DELAY ENTRY BY TCG AND OTHER CLECs

20. Despite the orders of the Texas PUC and the approved tariff, SWBT continues to delay processing of applications for collocated space and to engage in practices that are inconsistent with the tariff and with its obligation to provide collocation on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(6). Even though some cages are finally in place, CLECs still face significant barriers in entering new local markets because of SWBT's continued anticompetitive practices.

---

[13] *See* February 25, 1998 Open Meeting Transcript at 190; and Docket No. 16196, Order No., 32 (March 9, 1998).

21. For collocation applications submitted by TCG in Texas in 1998, SWBT has not met any quote or construction intervals imposed by the tariff. The delay is caused in large part by SWBT's practices in responding to the applications Those practices include (1) waiting until the end of the application period before raising any questions regarding the application, which extends the CLECs' wait for a price quote and the start of construction; (2) raising its questions in a piecemeal fashion, which causes additional and extended negotiations; and (3) waiting until the end of the construction interval to raise problems or to seek additional information, which again leads to delay and further negotiations.

22. In addition, for the 1998 applications in Texas, SWBT did not conform its pricing of collocation to the terms provided in the tariff until the end of August, 1998. As recently as July, 1998, SWBT held up construction on cages and, in one instance, refused to furnish access to a cage, insisting that it receive pricing based on the very ICB rates that the Texas PUC had removed from the tariff.

23. Rather than comply with its clear obligations under the Act, the Texas PUC orders, and its tariff, SWBT stubbornly holds to historic practices, rather than taking the necessary steps to open its monopoly markets. And SWBT certainly does not demonstrate a co-operative business attitude toward CLECs: where it has discretion to act, it unreasonably withholds information that could be provided to facilitate project completion and more rapid entry. For example, SWBT refuses to provide pertinent termination frame address information in a timely manner to CLECs, which delays CLEC's ability to provide service to customers through physical collocation. In addition, TCG encounters significant delays and is required to engage in further negotiations with

SWBT regarding whether TCG's collocation applications have standard power requirements under the tariff.

24. In sum, TCG continues to have grave concerns about its ability to obtain technically and economically efficient collocation from SWBT, because of SWBT's continued anticompetitive practices.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on October ___, 1998

/s/ James. R. Washington
James R. Washington

(Note: Original notarized signature page will be filed later)

SUBSCRIBED AND SWORN TO BEFORE ME this ____ day of October 1998.

_____
Notary Public

My Commission Expires:

_____